

10

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

F I L E D  
APR 16 2007  
CLERK'S OFFICE  
DETROIT

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 05-80216

v.

HON. LAWRENCE P. ZATKOFF

D-1 RICHARD KUSTRZYK

Defendant.

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S  
EMERGENCY MOTION SEEKING EXTENDED REPORTING DATE OR  
HOME CONFINEMENT

The United States of America, by its attorneys, STEPHEN J. MURPHY,  
United States Attorney for the Eastern District of Michigan, and SAIMA S.  
MOHSIN, Assistant United States Attorney for the District, respectfully opposes  
the defendant's request to extend his Reporting Date to the Bureau of Prisons and  
to Modify Terms of Confinement to Allow Home Confinement, for the following  
reasons:

1. On July 20, 2005, the defendant entered guilty pleas to Mailing of  
Child Pornography, in violation of 18 U.S.C. §2252A(a)(1), Receipt of Child  
Pornography, in violation of 18 U.S.C. §2252A(2), Possession of Child

Pornography, in violation of 18 U.S.C. §2252A(a)(5)(B) and on January 4, 2007, the defendant was sentenced to concurrent sentences of 30 months in prison, followed by 3 years of supervised release.

2. During the January 4, 2007 sentencing hearing, the Court permitted voluntary surrender to the Bureau of Prisons, stating: "the Court will order that the defendant report to a designated institution on February 23rd, 2007 at or before noon." (Exhibit 1: 01/04/07 Sentencing Hearing at TR: 23). The defendant was designated at FCI-Elkton.

3. The defendant failed to surrender to FCI-Elkton on that date. In his Emergency Motion, the defendant states that he was taken into surgery on March 15, 2007, and had been hospitalized for more than a week. (Defendant's Motion at p.1). Pretrial Services informed undersigned counsel that the first contact they had with the defendant was on March 9, 2007 and that the defendant was in the hospital on that date. The defendant also offers a letter dated March 1, 2007, from Dr. Joseph F. Burtka, recommending home confinement. The letter briefly references defendant's symptoms and states that the defendant was sick and hospitalized at Troy Beaumont Hospital on that date. There is no information about the defendant's whereabouts between February 23, and March 1, 2007, and between March 1 and March 9, 2007.

4. Moreover, the government opposes the defendant's request for a modification of terms of confinement to allow home confinement. After the defendant failed to surrender at his designated facility, FCI-Elkton, the government learned that On October 23, 2006, Sterling Heights Police were called to the defendant's residence where they recovered an unregistered blue steel snub nose revolver and ammunition. The defendant initially lied to the officers, stating that he heard a popping noise prior to his back door wall shattering. Later, the defendant admitted that he possessed the unregistered firearm, was blowing off steam and fired a round at the door. Officers found and seized the firearm loaded with 4 live rounds. (Attached Exhibit 2, Sterling Heights Police Report). At the time the defendant possessed the firearm, he had been convicted (though not sentenced) of the instant charges and was in violation of his bond conditions which prohibited him from committing a state or local crime. The defendant did not report this incident to pretrial services or to the Court prior to his sentencing on January 4, 2007. Instead, the defendant's attorney, perhaps unwittingly, asked the Court to consider that the defendant "has led a life otherwise without blemish for fifty odd years." (Exhibit 1: 01/04/07 Sentencing Hearing at TR: 7).

5. The defendant pleaded guilty nearly 20 months ago. Since that time, he has repeatedly asked for extensions of time, including to allow him time to vest


his pension and benefits, to allow him time to care for his elderly and frail father, and now, because of his physical health problems. The government contends that the defendant's failure to report to FCI-Elkton was unjustified. Moreover, no extension of reporting date or modification of conditions is warranted.

CONCLUSION

For these reasons, the government asks the Court deny the defendant's request for an extension of reporting date and for a modification of the defendant's terms of confinement.

Respectfully submitted,

STEPHEN J. MURPHY  
United States Attorney

  
Saima S. Mohsin  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Michigan  
211 West Fort Street, Suite 2001  
Detroit, Michigan 48226  
(313) 226-9163  
[saima.mohsin@usdoj.gov](mailto:saima.mohsin@usdoj.gov)

Date: March 20, 2007.

Sentencing Hearing  
Thur., 1-4-2007

7

1 the war. That's where he met his future wife,  
2 Mr. Kustrzyk's mother. Mr. Kustrzyk's mother, entire  
3 family except for her were wiped out in those camps and so  
4 Mr. Kustrzyk now is that of a sole person taking care of  
5 his father.

6 In the past three or four months, you see  
7 Mr. Kustrzyk can barely get around. He has not been able,  
8 Judge, to talk about this at all. He goes to therapy.  
9 There was funding for the therapy and when that stopped he  
10 went anyway, paid for it himself. And he has lost  
11 40-pounds. He is 113-pounds, your Honor, at this time.  
12 Barely able to do it.

13 I think that there is a deep, deep remorse here  
14 and deep psychological scar which he has inflicted upon  
15 himself and that is something I think which you can take  
16 into account because it's never going to happen again.

17 I think, moreover, your Honor, if you consider  
18 that he has led a life otherwise without blemish for fifty  
19 odd years, Fifty-four years, worked, raised children, and  
20 only at the end he gives way to this. He is himself not a  
21 predator on children. He has never approached any living  
22 child. It's indirect. I don't mean to minimize that. I  
23 don't mean to minimize the indirect effect. But it's  
24 important that there is a distinction between direct and  
25 indirect effects and that is something that you should

Sentencing Hearing  
Thur., 1-4-2007

23

1 period of 30 months. That is on Counts One, Two and  
2 Three. Those should be -- they shall be served  
3 concurrently. That is to be followed by three years of  
4 supervised release with the standard conditions as adopted  
5 by the Eastern District of Michigan. Special conditions  
6 will be that the defendant undergo mental health and/or  
7 substance and abuse and/or alcohol testing and treatment  
8 and the direction and discretion of the United States  
9 Probation Department. I am also adopting all the other  
10 special conditions as recommended by the Probation  
11 Department. I am imposing a special assessment in the  
12 amount of \$300. I am waiving all fines and costs of  
13 confinement.

14 I am going to issue some time today or tomorrow a  
15 written Opinion with respect to specific reasons for  
16 failing to abide by the advisory guidelines. That will be  
17 issued today or tomorrow.

18 Does the government have any objections to  
19 voluntary reporting?

20 MS. MOHSIN: Your Honor, we don't have an  
21 objection to voluntary reporting. But I have some things  
22 to put on the record when the Court is ready.

23 THE COURT: There being no objection, the  
24 Court will order that the defendant report to a designated  
25 institution on February 23rd, 2007 at or before noon. You



City of Sterling Heights Police Department  
40333 Dodge Park Road  
Sterling Heights, Michigan 48313  
586.446.2800

## NARRATIVE REPORT

PRIMARY ☒ SUPP ☐ PAGE 2 OF 2

1	DATE	11-04-2006	DAY	MON	SHEET	03	PLATOON	01	BADGE 1	6201	BADGE 2		YR	016	INCIDENT NUMBER	42685
2	ALL CRIME-OUT, (BASED ON APPLICABLE STANDARDS) NARRATIVE REPORT FORMS MUST ADHERE TO THE FOLLOWING STANDARDIZED FORMAT. SUMMARY / WEATHER / ROAD CONDITIONS / APPEARANCE OF DRIVER / SOBRIETY TESTS / DOCKING / INTERVIEW WITH VICTIM(S) / INTERVIEW WITH SUSPECT(S) / INTERVIEW WITH WITNESS(ES) / ARREST / OFFICER ACTIONS / ADDITIONAL INFORMATION															

3 RCL TO A "MUR" AT 40220 DIANE

5 SUMMARY: RICHARD KUSTEZYK REPORTED HEARING A POPPING NOISE  
6 THEN THE BACK DOOR WALL SHATTERED. A BUL WAS FOUND  
7 IN THE SAME ROOM AND RICHARD ADMITTED TO FIRING OFF 1 ROUND.

9 INFORMATION: UPON ARRIVAL I SPOKE WITH RICHARD. RICHARD  
0 STATED HE WAS WATCHING TV IN THE FAMILY ROOM WHEN HE HEARD  
1 A POPPING NOISE THEN THE BACK DOOR WALL SHATTERED. RICHARD  
2 DID NOT SEE ANYONE IN THE BACKYARD BEFORE OR AFTER THE  
3 DOOR WALL SHATTERING. RICHARD COULD PROVIDE NO MORE INFORMATION

5 THE DOOR WALL WAS COMPLETELY SHATTERED WITH A SMALL HOLE  
6 NEAR THE BOTTOM OF THE DOOR. THE APPEARED TO BE A BULLET  
7 HOLE. RICHARD GAVE ME PERMISSION TO SEARCH THE ROOM TO  
8 TRY TO FIND WHATEVER MADE THE HOLE. UNDERNEATH THE COUCH  
9 RICHARD SAID HE WAS SITTING ON I FOUND A BLUE STEREO SWIB  
0 NIXE REVOLVER. I TOOK CUSTODY OF THE GUN AND ASKED RICHARD IF  
1 IT WAS HIS. HIS RESPONSE WAS "YES, BUT IT'S NOT REGISTERED." I OPENED THE  
2 CYLINDER AND FOUND 4 LIVE ROUNDS AND 1 FIRED ROUND. RICHARD THEN  
3 ADMITTED TO FIRING ONE ROUND AT THE DOOR WALL. RICHARD SAID HE DID NOT  
4 SHOT AT ANYONE, HE WAS RUNNING OFF STEAM. IT APPEARS THE BULLET WENT  
5 INTO THE GROUND IN THE BACKYARD.

7 RICHARD IS 10-29 CLEAR, RELEASED PENDING WARRANT. THE GUN IS 10-29 CLEAR  
8 NO RECORD ON P TAB # 124227.

9 SET SPARKOVSKY ON SCENE

INVESTIGATING OFFICER(S)

SPARKOVSKY

REVIEWED BY

ALSO

ASSIGNED TO / BADGE

ATTENTY

GOVERNMENT  
EXHIBIT

2

PHOTOGRAPHED

From: STERLING HEIGHTS PD RECORDS 5862764069

03/09/2007 13:06 #021 P.004/006



City of Sterling Heights Police Department  
 40333 Dodge Park Road  
 Sterling Heights, Michigan 48313  
 586-446-2800

# INCIDENT / PROSECUTION REPORT

AREA DISTRICT

PRIMARY ☒ SUPP ☐ PAGE 1 OF 2

01	DATE	11/23/06	DAY	MON	03	PLAT	0201	BADGE 1	BADGE 2	YEAR	06	INCIDENT #	42685		
02	RECEIVED	11/52	DISPATCHED	11/52	ARRIVED	21/07	COMPLETED	21/45	DATE(S) OCCURRED	11/23/06	TIME(S) OCCURRED	19:50			
03	LOCATION / ADDRESS (DIRECTION, STREET, SUFFIX, QUALIFIER)										LOCATION 2 (INTERSECTING STREET)				
04	CITY										STATE	ZIP	BUSINESS PHONE		
05	ESTAB CODE	1000	ORIGIN	PHONE		REPORT TAKEN		PHONE		ADDRESS					
06	NATURE OF INCIDENT #1										ATT	ALC DRUGS COMP	BIAS	WEAPON	
07	NATURE OF INCIDENT #2										ATT	ALC DRUGS COMP	BIAS	WEAPON	
08	NATURE OF INCIDENT #3										ATT	ALC DRUGS COMP	BIAS	WEAPON	
09	NATURE OF INCIDENT #4										ATT	ALC DRUGS COMP	BIAS	WEAPON	
CODES (1) REPT'D BY (2) OWNER (3) VICT (4) PERS INTERV (5) ARREST (6) SUSP (7) MISS'G (8) WITH (9) SECUR'D BY (10) JUV ARREST (11) DRIVER (12) PASSNGR (13) RESPONSIBLE (14) SUMMONED (15) MISC															
10	CODE	VICT	ACTUAL VICTIM/COMPLAINANT/REPORTOR (LAST, FIRST, MIDDLE, SUFFIX)					RAC	SEX	DOB	AGE	VICTIM TO RECEIVE CIVIL NOTICE			
11	CODE	NAME (LAST, FIRST, MIDDLE, SUFFIX) (ACTUAL VICTIM'S NRP)					RAC	SEX	DOB	AGE	RELATION TO ACTUAL VICTIM				
12	ADDRESS (DIRECTION, STREET, SUFFIX, QUALIFIER)										CITY	STATE	ZIP		
13	HOME PHONE	BUSINESS PHONE	STATE	DRIVERS LICENSE #	CONN	8282	TYP	REL TO DEF #	INJ	V CIRC	JHC				
14	CODE	1601	SUSPECT/WITNESS PERSON NAME (LAST, FIRST, MIDDLE, SUFFIX)	RAC					SEX	DOB	AGE				
15	ADDRESS	DIRECTION, STREET, SUFFIX, QUALIFIER										CITY	STATE	ZIP	
16	HOME PHONE	BUSINESS PHONE	HEIGHT	WEIGHT	EYES	HAIR	LENGTH	STYLE	BUILD	SKIN TONE					
17	STATE	DRIVERS LICENSE #	SOC SEC #	SID #	FBI #	MISC #									
18	ALIAS (MAIDEN NAME, LAST, FIRST, MIDDLE, SUFFIX)										COMMENTS/CLOTHING/ ETC				
19	ARREST DATE	ARREST DATE	PLAT	BADGE 1	BADGE 2	FM	DIS	ARREST DATE	PLAT	BADGE 1	BADGE 2	FM	DIS		
20	OST	ARKED AT ARREST	ORIGIN	DISP	PER	TEL	REMARKS								
CODES (1) HOLD (5) STOLEN (V) COUNTERFEIT (E) EVIDENCE (L) LOST (A) ATTACKED (R) RECOVERED (F) FOUND (C) CONFISCATED (X) IMPOUNDED (V) SUSPECT VEHICLE (D) BURNER															
21	COPIES	DESCRIPTION	PROP TYPE	QUANTITY	YEAR	MAKE	MODEL								
22	STYLE	GOLD(S)	MONTH	YEAR	STATE	LICENSE	SERIAL / VIN								
23	STOLEN	DAMAGED	RECOVERED	PROPERTY TAG #	LOCATION PROPERTY	LEIN REF #	NIC #								
24	COMMENTS / INSURANCE CO / LIEN HOLDER / BANK / REC BY / WHERE / WHO										REC BADGE 1	REC BADGE 2	LBO	RECOVERY DATE	DG TYPE
25	BRIEF SUMMARY OF OFFENSE (TITLE / SUMMARY)														
26															
27															
28															
29	INVESTIGATING OFFICER(S)														
30	REVIEWED BY														
31	ATTENTION TO														

42685



From:STERLING HEIGHTS PD RECORDS 5862764069

03/09/2007 13:07 #021 P.006/006

Sterling Heights Police Department

40333 Dodge Park Road, Sterling Heights, MI 48313  
(586) 446-2800 MI5076300

PD #

# NARRATIVE REPORT

SUPPRESS	RPPTYPE SUPPLEMENTAL	PAGE 1 OF 1
INCIDENT STATUS <input type="checkbox"/> CLR ARREST <input type="checkbox"/> CLR EXCEPT	CRIME CLASS	INCIDENT # 06-0042685
<input type="checkbox"/> UNF <input type="checkbox"/> INACT		

01	DATE 01/15/07	DAY MON	SHIFT 02	PLAT 01	BADGE 1 0690	BADGE 2	INCIDENT STATUS <input type="checkbox"/> CLR ARREST <input type="checkbox"/> CLR EXCEPT	CRIME CLASS	INCIDENT # 06-0042685
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02 OFC.A.FETT#0690 01/15/07 @1010HRS.

03

04 REGARDING:FELONY WARRANT FOR FRAUD-FALSE STATEMENT

05

06 ARRESTED:KUSTRZYK,RICHARD FRANCIS W/M 01/22/53  
40220 DIANE STERLING HEIGHTS,MI.48313

07 TX.[586]268-6663

08

09 CHARGE:FELONY WARRANT FOR FRAUD-FALSE STATEMENT

10 OCA:06-42685 41-ADIST.CT.STERLING HEIGHTS

11 [FALSE REPORT OF A FELONY]

12 NO BOND

13 STATION REPORT

14

15 KUSTRZYK CAME INTO THE STATION TO TURN HIMSELF IN ON OUR DEPARTMENT'S

16 OUTSTANDING FELONY WARRANT.THE WARRANT WAS CONFIRMED PER THE OPERATIONS

17 OFFICER,SGT.LABAERE.KUSTRZYK WAS TAKEN INTO CUSTODY AND ESCORTED TO THE

18 DETENTION FACILITY WHERE HE WAS PROCESSED.KUSTRZYK WAS LEFT WITH DETENTION

19 PERSONNEL TO AWAIT ARRAIGNMENT.

20

21 THE WARRANT WAS CANCELLED FROM LEIN BY BADGE#2385.

22

23

24

25

26

27

28

29

INVESTIGATING OFFICER(S) A.FETT#0690	REVIEWED BY 107	ASSIGNED TO / BADGE	ATTENTION TO LS
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U. S. Department of Justice



United States Attorney  
Eastern District of Michigan

*AUSA Saima S. Mohsin*

(313) 226-9163

211 W. Fort Street  
Suite 2100  
Detroit, Michigan 48226-3211

## FAX COVER SHEET

TO: Chambers of Honorable Lawrence P. Zatkoff

FROM: AUSA SAIMA MOHSIN

FAX #: (810) 98401480

DATE: March 20, 2007

RE: Richard Kustzyrk

Number of Pages (Including Cover): ~~X~~ 10

Please find attached courtesy copy of the Government's Response to the defendant's Emergency Motion for Extension of Report Date and Request for Modification of Confinement to Allow Home Confinement.

The Government's Response to be E-Filed tomorrow am.